

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

<b>ZACHARY SPADA,</b>	)	
<b>Plaintiff,</b>	)	
	)	<b>C.A. No. 20-223 Erie</b>
	)	
<b>v.</b>	)	<b>District Judge Susan Paradise Baxter</b>
	)	<b>Magistrate Judge Keith A. Pesto</b>
<b>WARDEN KEVIN SUTTER, et al.,</b>	)	
<b>Defendants.</b>	)	

**MEMORANDUM ORDER**

This action was commenced by Plaintiff's filing of a *pro se* civil rights complaint pursuant to 42 U.S.C. § 1983, along with a motion to proceed *in forma pauperis* [ECF No. 1].

This matter was referred to United States Magistrate Judge Keith A. Pesto for report and recommendation in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrates.

On October 13, 2020, Magistrate Judge Pesto issued a combined Order and Report and Recommendation [ECF No. 4]. The Order directed the Clerk to administratively close this case pending Plaintiff's payment of the filing fee or submission of an inmate account statement. The Order further directed the Clerk to reopen this case if Plaintiff either paid the filing fee or filed an inmate account statement within twenty days of the date of the Order. Alternatively, the Report and Recommendation ("R&R") initially recommends that this action be dismissed for Plaintiff's failure to prosecute in the event Plaintiff fails to timely comply with the Order. Since Plaintiff has since filed an inmate account statement within the allotted time period, this portion of the R&R has been rendered moot and the case will be reopened.

The remainder of the R&R recommends that Plaintiff's claims of excessive use of force be dismissed against all Defendants other than Defendants Houghton, Bolt, and Wood, pursuant to the screening provisions of 28 U.S.C. § 1915(e)(2)(B)(ii). This dismissal is recommended to be without prejudice to Plaintiff's right to amend his complaint to more fully state claims against any or all of said Defendants. Plaintiff has since filed a document entitled "Praecipe for Non-Objection/Non-Amendment" stating that he "is not objecting or filing any amendment pursuant to the O, R&R dated 10/13/2020."

In light of Plaintiff's lack of intent to file any objection or amendment, and after de novo review of the complaint, together with the report and recommendation, the following order is entered:

AND NOW, this 18th day of November, 2020;

IT IS HEREBY ORDERED that the report and recommendation of Magistrate Judge Pesto, issued October 13, 2020 [ECF No. 4], is adopted as the opinion of the Court insofar as it recommends dismissal of Plaintiff's claims against all Defendants other than Defendants Houghton, Bolt, and Wood. Such dismissal is with prejudice. The Clerk is directed to reopen this case and to terminate all Defendants other than Defendants Houghton, Bolt, and Wood, from this action.

  
SUSAN PARADISE BAXTER  
United States District Judge

cc: Keith A. Pesto  
U.S. Magistrate Judge  
  
all parties of record